

Office of the Defense Counsel

28 March 1957

SUBJECT: Request for Top Secret Clearance for all members of the General Court Martial, the Court Reporter, and the Civilian Counsel in the case of Colonel John C. Nickerson, Jr.

TO: Commanding General, Third United States Army, Fort McPherson, Georgia. ATTENTION: Army Staff Judge Advocate

1. As the appointed Military Defense Counsel and the retained Civilian Defense Counsel, we hereby request that all members of the General Court Martial, the Court Reporter, and both Civilian Defense Counsels, be cleared to receive "Top Secret" information which is anticipated will be presented in the trial of the case.
2. Colonel Nickerson informs us that he has information which is classified "Top Secret" and which bears directly upon the defense that must be presented to the Specifications of Charge I and to Specification 1 of Charge II. One of the key elements in the most serious offense with which Colonel Nickerson is charged is his knowledge of whether certain information would be harmful to the United States if divulged to a foreign power. His state of knowledge must be fully explained to the court. Since Colonel Nickerson was cleared for "Top Secret" and for a very special category of "Top Secret" for a specific and special project, it is essential that this information be made available to the defense and the court.
3. We do not as yet know the precise nature of this information which Colonel Nickerson has because he informs us that he is not permitted to divulge any of the information. We are informed that he, along with a very few other officers, had access to this information and before the information was made available to him, it was necessary that a special clearance be granted by G-2, Department of the Army. This information is not contained in any document or writing presently in the possession of Colonel Nickerson. It is information that has been retained in his memory only. It is suggested that Brig Gen J. A. Barclay, Deputy Commanding General, Army Ballistic Missile Agency, Redstone Arsenal, could give more information on this matter than the

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defense is able to do at the present time.

4. Your attention is respectfully invited to the case of the United States v. Andolschek 142 F 2d 503 at 506, which holds that once the Government choses to try a case it waives any right to suppress otherwise privileged material.

"So far as they directly touch the criminal dealings the prosecution necessarily ends any confidential character the documents possess-----The Government must chose; either it must leave the transactions in the obscurity from which a trial will draw them, or it must expose them fully. Nor does it seem to us possible to draw any line between documents whose contents bear directly upon the criminal transaction and those which may be only indirectly relevant". See also U. S. v. Beekman, 155 F 2d 581, 584 (2 Cir 1946); U. S. v. Grayson, 166 F. 2d 863, 870 (2d Cir 1948); Delany v. U.S. 199 F. 2d 107, 114 (1st Cir 1952).

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By _____